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To: Microsoft ATR
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Subject: Microsoft Settlement

I would like to state that I believe the current proposed remedy is reasonable in that it prevents Microsoft from using exclusionary contracts while not harming consumers by fragmenting a market that they prefer to remain intact, as did some other proposed remedies including that of Judge Jackson. Nor does the current remedy reward Microsoft's competitors by hobbling Microsoft's pro-competitive behavior, as other proposed remedies would do.

Although Microsoft may have stepped over the bounds with its contracts, those contracts had little to do with its success, or more importantly, with the failure of its competitors, including Netscape. As my co-author, Stephen Margolis, and myself demonstrate at length in our book: "Winners, Losers & Microsoft" Internet Explorer was a better browser (Microsoft's economist witness misspoke on this issue when he stated that there was little difference between the two-our work was more thorough than his) and as we also demonstrated, large shifts in market share routinely occurred when a new product was acknowledged to be of higher quality, whether it was Microsoft's or someone else's.

Additionally, Microsoft's overall market behavior has been beneficial to consumers. Microsoft is largely responsible for the large decrease in software prices that occurred throughout the 1990s, and is also demonstrated in our book. For an examination of software markets that went well beyond the scope of the trial, in order to see the forest through the trees, I suggest that you read our book. Lest you think that we are merely apologists for Microsoft, I note that we have been propounding the ideas put forward in the book for over a decade in leading academic journals, well before the Microsoft case arose or could even be imagined.

Since Microsoft's illegal behavior had little to do with its success, the remedy should be to prevent that behavior but not to reward its competitors who failed to succeed in the marketplace due to their own missteps. The current remedy does just that. It would be wrong to punish Microsoft merely because Microsoft's competitors wished to weaken competition in the market, as they clearly do. Why else would companies like Sun, which does not have any products in the Windows universe, be so intent on a more 'punishing' remedy. Sun has no interest in seeing the Windows/Intel market do well, or for more vibrant competition to occur in that market. It merely wants less competition in the market for workstations and servers, a market that did not play a role in the case since Microsoft is not the dominant player there. Antitrust should not be allowed to be the handmaiden of attempts to subvert competition.

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